

UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

UNITED STATES OF AMERICA,
for the Use and Benefit of PATRIOT
GENERAL CONTRACTING, INC.

Plaintiffs,

v.

MANILAQ SERVICES, LLC, an
Alaska limited liability company, and
HUDSON INSURANCE COMPANY,
a foreign corporation,

Defendants.

Case No.

COMPLAINT FOR SUMS
OWING, BREACH OF
CONTRACT, VIOLATION OF
THE PROMPT PAYMENT ACT,
AND AGAINST MILLER ACT
PAYMENT BOND

Plaintiff, United States of America, for the use and benefit of Patriot General Contracting, Inc. (collectively "Patriot"), allege as follows:

I. PARTIES

1. Patriot is, and at all times material to this action was, a corporation organized and existing under the laws of the State of Washington, and a licensed contractor under the laws of the State of Washington (PATRIGC898B4), and has met all other prerequisites to maintain this action.

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LAW OFFICES OF
AHLERS & CRESSMAN PLLC
999 THIRD AVENUE, SUITE 3800
SEATTLE, WASHINGTON 98104-4023
(206) 287-9900 Fax: (206) 287-9902

2. Patriot performed concrete paving work as a subcontractor to Defendant, Maniilaq Services, LLC (“Maniilaq”), for the construction project known as the Regional Logistics Support Complex (RLSC) Organizational Vehicle Parking at Joint Base Lewis-McChord, Contract No W912DW-14-C-0011 (the “Project”). The Project was constructed by the United States of America through the United States Army Corps of Engineers (“Corps”).

3. Maniilaq is an Alaska corporation. Maniilaq was the prime contractor to the Corps on the Project.

4. Hudson Insurance Company (Hudson) is a Delaware corporation, duly organized and existing under the laws of the State of Delaware with its principal place of business in the State of New York. Hudson issued performance and payment bonds in connection with the Project (Bond Number ASB450).

II. JURISDICTION AND VENUE

5. This Court has jurisdiction, as this case arises under the Miller Act, 40 U.S.C. §§ 3131 and 3133. In accordance with the Miller Act, and as part of its obligations pertaining to the Project, Maniilaq, as principal, and Hudson, as surety, provided to the United States of America a payment bond (the “Bond”). Maniilaq and Hudson are each jointly and severally liable for full payment up to the penal sum of the Bond to persons and entities who supplied labor and materials in connection with the Project, including Patriot.

6. This Court also has jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1332, 1352, and 1367.

7. This action involves a payment dispute on a Federal Government construction project in Pierce County, Washington. Venue is proper in this Judicial

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1 District, pursuant to 28 U.S.C. § 1391 and 40 U.S.C. § 3133(b)(3)(B), because the
 2 Project is located in this Judicial District, and the events or omissions giving rise to the
 3 claims occurred in this District.

4 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

5 8. Patriot entered into a subcontract (the "Subcontract") with Maniilaq, by
 6 which Patriot agreed to provide labor and materials in connection with the Project. The
 7 agreed contract price to be paid to Patriot was \$1,895,565.27.

8 9. Maniilaq has failed to pay sums owing to Patriot in accordance with the
 9 Subcontract and, therefore, has breached the Subcontract with Patriot. Maniilaq owes
 10 Patriot such damages as will be proved at trial, which for purposes of this Complaint
 11 are stated to be a sum not less than \$384,570.20 together with prejudgment interest,
 12 attorneys' fees, and costs, as the reasonable, unpaid value of Patriot's work.

13 **IV. SECOND CAUSE OF ACTION:**
 14 **CLAIM AGAINST PAYMENT BOND UNDER MILLER ACT**

15 10. Maniilaq has failed to pay Patriot the principal sum of \$384,570.20 or
 16 such other sum as will be proven at trial.

17 11. In accordance with the terms of the Bond and Miller Act, Maniilaq and
 18 Hudson are jointly and severally liable to Patriot for a sum not less than \$384,570.20,
 19 or such other sum as will be proven at trial, together with interest at the maximum rate
 20 legally permissible from the date said sums were due, any late payment interest penalty
 21 as provided under the Prompt Payment Act, costs, attorneys' fees, and such other
 22 amounts as may be proven at trial and to which Patriot is entitled either by statute or
 23 under the Subcontract.
 24

VI. THIRD CAUSE OF ACTION:**VIOLATION OF PROMPT PAYMENT ACT**

12. Maniilaq's conduct in failing and refusing to pay Patriot for all labor and material it provided to the Project is a violation of 31 U.S.C. § 3901, *et seq.* ("the Prompt Payment Act"). As a consequence, pursuant to the Prompt Payment Act, Patriot is entitled to be paid the full Subcontract balance, as well as the statutory late payment interest penalty calculated beginning the day after the required payment date.

VII. SUBCONTRACT DISPUTE RESOLUTION PROVISIONS

13. The parties, by Subcontract, agreed to mediate and arbitrate disputes between them prior to litigation. Pursuant to the Miller Act, (40 U.S.C.A. §§ 3131-3134), however, Patriot is required to bring this action in federal court to preserve its statutory rights. By bringing this action, Patriot is not waiving any contractual requirements under the Subcontract including mediation and/or arbitration and, with full reservation of rights, is willing to agree to stay the matter until any required conditions precedent are met, provided that Maniilaq expeditiously commences and completes any necessary contractual dispute resolution processes.

VII. PRAYER FOR RELIEF

WHEREFORE, Patriot requests Judgment as follows:

A. Against Maniilaq and Hudson, jointly and severally, for a sum not less than \$384,570.20, or such other sum as will be proven at trial, plus interest at the maximum rate legally permissible from the date said sums were due, the late payment interest penalty as provided under the Prompt Payment Act, attorneys' fees, and costs in an amount to be proved at time of trial;

1 B. Attorneys' fees and costs in accordance with the Subcontract or other
2 applicable law; and

3 C. For such other and further relief as the Court may deem just and
4 equitable.

5
6
7 DATED: This 9th day of April, 2015.

DATED: This 9th day of April, 2015.

8 **AHLERS & CRESSMAN PLLC**

AHLERS & CRESSMAN PLLC

9 By: /s/ John P. Ahlers
10 John P. Ahlers, WSBA #13070
jahlers@ac-lawyers.com
11 999 Third Avenue, Suite 3800
Seattle, Washington 98104-4088
12 Telephone: (206) 287-9900
Facsimile: (206) 287-9902
13 Attorneys for Plaintiff

By: /s/ Lindsay K. Taft
Lindsay K. Taft, WSBA #43012
ltaft@ac-lawyers.com
999 Third Avenue, Suite 3800
Seattle, Washington 98104-4088
Telephone: (206) 287-9900
Facsimile: (206) 287-9902
Attorneys for Plaintiff

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